IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

A.S.NO.319 OF 1996

1.Nadanasababathi

2.Latha

3.Chellammal ...Appellants/1,3 & 4 th Defendants

Vs.

1.Subramaniya Pillai

2.Ramalingam

3.Mani ...Respondents/Plaintiff and 2nd & 5th Defendant

Appeal Suit is filed against the judgment and decree dated 31.1.95 made in O.S.No.213 of 1990 on the file of the Subordinate Judge, Mayiladuthurai.

For appellants : Mr.S.Sounthar

For respondent No.1 : Mr.A.Muthukumar

JUDGMENT

The appeal has been preferred against the judgment and decree dated 31.1.95 made in O.S.No.213/1990 on the file of the Subordinate Judge, Mayiladuthurai.

2. The suit has been filed by the 1st respondent/ plaintiff for partition and separate possession of his 1/4th share in the suit property. The first appellant and the 2nd respondent are his sons, 2nd appellant is the married daughter and the 3rd appellant/4th defendant is the wife of the first respondent. It is an admitted case that the suit properties are ancestral properties of the first respondent and his sons and daughter. The 3rd appellant/4th defendant had claimed maintenance from her husband.

3. Before the Trial Court on the side of the 1st respondent/plaintiff himself was examined as P.W.1. On the side of the appellants and the 2nd respondent, the first appellant and the 3rd appellant were examined as DW1 and DW2 apart from other

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witnesses. On the side of the appellants and the 2nd respondent Exs.B.1 to B.18 were marked.

4. Considering the facts and circumstances and the evidence available on record the Trial Court has granted preliminary decree for partition as prayed for. Against which the appellants/D1, D3 and D4 have come forward with this appeal.

5. Mr.M.Sounthar, learned counsel appearing for the appellants would contend that the preliminary decree is bad on the ground of partial partition. The learned counsel further contended that there are family debts and liabilities to be discharged and that the appellants had spent money for the marriage of the second appellant.

6. Per contra, Mr.A.Muthukumar, learned counsel appearing for the 1st respondent would contend that the entire ancestral properties are being enjoyed by the appellants and the 2nd respondent and the 1st respondent, a senior citizen, though he was the karta of the family was driven of out the house and starving without anything and to deprive his legitimate rights the appeal has been preferred by the appellants.

7. It is seen that the Trial Court has raised following issues.

(i)Whether the plaintiff/1st respondent is entitled to 1/4th share in the suit property?

(ii)Whether he is liable to pay any debts?

(iii)Whether he is liable to pay maintenance to the third appellant his wife ?

(iv)Whether he is entitled to mesne profits?

(v)To what relief the plaintiff/1st respondent is entitled to ?

8. Admittedly, no issues were framed by the Court below regarding partial partition. Only the abovesaid issues are framed by the Court below. It is known to the appellants before the Court below what were the issues framed by the Trial Court. But, admittedly, it is not brought to the notice of the Court below the issue regarding partial partition. Further, it is seen from the impugned judgment of the Trial Court that the Court had discussed in detail about the same and hence it is not a suit for partial partition. Further, according the appellants, the first respondent has not given any details or supporting documents, to show that it was a partial partition.

9. It has been admitted that the 1st respondent had allotted certain properties to the 3rd appellant his wife towards maintenance. It has been clearly admitted that the suit property is the ancestral property of the 1st respondent and his sons the first appellant and the 2nd appellant. The 3rd respondent is a third party.

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10. The learned counsel appearing for the first respondent would contend that after the admission of this appeal, stay was granted by this Court and subsequently considering the merits this Court has passed an order directing the appellants to deposit Rs.1 lakh as condition precedent. The same order was not complied with. Hence, as per order dated 29.3.2007 made in C.M.P.No.131/2007 in A.S.No.319/2006 the stay was vacated and further directed the registry to send back the records in O.S.No.213/1990 to the Trial Court, namely, Sub-Court, Mayiladuthurai. Accordingly, the records were sent to the Court below as per the abovesaid order.

11. It is not in dispute that subsequently the Trial Court has passed final decree pursuant to the preliminary decree passed in the said Court. From the evidence of the appellant who was examined as D.W.1 in the cross-examination it has been made clear that the first respondent/plaintiff is entitled to 1/4th share in the suit property and that he was sent out from the house. Since 1988 the entire properties are being enjoyed by the appellants and the 2nd respondent and that the first respondent/plaintiff does not know anything about the income and expenditure. Though the first respondent is the father of the 1st appellant, it was stated that he has no means and that he was taking food from some other persons and that doing the work as broker for selling cattle. It is seen from the records that the 1st respondent was aged about the 55 years while the case was filed in the year 1990 and as such, he is a senior citizen aged about 72 years. In such circumstances, one way or other in order to deprive the rights of the 1st respondent/plaintiff, the appellants have raised various grounds which are not legally sustainable and it has to be construed only as depriving the legitimate rights of the 1st respondent. I find no merits in the appeal.

12. Therefore, the appeal is dismissed with costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Subordinate Judge, Mayiladuthurai

one cc to Mr.S.Sounthar, advocate SR.No.67929
one cc to Mr.A.Muthukumar, advocate SR.No.67440

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